Supreme Court, U.S.
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No. 00-267

IN THE

Supreme Court of the United States

BARBARA ASHLEY,

Petitioner,

v.

BLUE CROSS AND BLUE SHIELD OF MICHIGAN,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF IN OPPOSITION

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OPP

STATEMENT PURSUANT TO RULE 29.6

Respondent, Blue Cross and Blue Shield of Michigan, is a state regulated non-profit health care corporation.

REASONS FOR DENYING THE WRIT

The Petition should be denied because this matter simply involves Petitioner's "change of heart" following a settlement agreement that Petitioner freely and voluntarily agreed to, while represented by counsel, in a civil action for disability pension benefits brought pursuant to the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. §§ 1001-1461. The district court conducted a bench trial. Following a recess, the parties notified the court that they had reached a settlement, and desired dismissal of the lawsuit. The district court specifically questioned the parties on the record in open court, including Petitioner directly, as to whether the terms of the settlement was understood and agreed upon. Petitioner also questioned Respondent's counsel at trial to obtain clarification of the payment terms of the settlement. Both parties, including Petitioner, expressed their assent to the terms of the agreement. Neither the Sixth Circuit's ruling, nor the record below, raise the question presented by the Petition.

There is no support in the record for Petitioner's contention that she was "threatened" that if she did not agree to the settlement amount, she would receive nothing. *See* Pet. at 6. Moreover, the record does not support Petitioner's assertion that the settlement agreement was the product of fraud. *Id.*

In short, Petitioner attempts to make a "constitutional case" out of what really is the enforcement of a settlement agreement freely entered into between the parties. The Sixth Circuit correctly affirmed the enforcement of this agreement. The Sixth Circuit's ruling was proper in all respects and Respondent respectfully urges this Honorable Court to deny the Petition for Writ of Certiorari.

I.

THIS CASE IS ABOUT ENFORCING A PRIVATE SETTLEMENT AGREEMENT BETWEEN THE PARTIES WITH NO CONSTITUTIONAL IMPLICATIONS

Petitioner requests that a writ of certiorari be issued to review the judgment of the courts below, which Petitioner claims denied her "constitutional rights" to retirement benefits. *See* Pet. at 1. This case does not involve a constitutional question, but rather the enforcement of a private settlement agreement entered into between the parties in this case.

A district court's decision to approve a settlement agreement is reviewed for an abuse of discretion. *See Odomes v. Nucare, Inc.*, 653 F.2d 246, 252 (6th Cir. 1981). Enforcement of a settlement agreement is appropriate where no substantial dispute exists regarding the entry into and terms of an agreement. *See Kukla v. National Distillers Prods. Co.*, 483 F.2d 619, 621 (6th Cir. 1973). "[O]nly the existence of fraud or mutual mistake can justify reopening an otherwise valid settlement agreement." *Brown v. County of Genesee*, 872 F.2d 169, 174 (6th Cir. 1989).

On September 10, 1997, Petitioner, through counsel, filed an ERISA lawsuit against Respondent, her former employer. The complaint alleged that Petitioner became totally and permanently disabled during the course of her employment. Petitioner requested and received disability pension benefits in accordance with Respondent's Retirement Income Plan, but Petitioner alleged that Respondent improperly calculated the amount and the commencement date of the monthly benefit to which she is entitled. Pet., App. 1-2.

On September 1, 1998, the district court conducted a bench trial. Petitioner was represented at trial by counsel. Following a recess, the parties notified the court that they had reached a settlement. After Petitioner's counsel placed the settlement on the record, Petitioner asked several questions of counsel for Respondent as to the calculation of her agreed upon monthly benefit, and indicated that the response to those questions were satisfactory to her. (R. 53, TR at 58-59). Petitioner indicated on the record that based on the terms of the settlement, she was willing to dismiss the lawsuit. (*Id.* at 60). As the Sixth Circuit properly observed, "[t]he transcript reveals that the parties agreed to the terms of the settlement agreement and that [Petitioner] knowingly, voluntarily, and intelligently accepted those terms." Pet., App. 3.

In a transparent attempt to grab this Court's attention, Petitioner argues that she was "threatened" into accepting the settlement. This assertion is totally unsupported by any evidence contained in the record. It is well settled that an allegation of misrepresentation or fraud made by a party, without corroboration, does not satisfy the "heavy burden" of establishing that a settlement agreement was invalid. *See Harris v. Dept. of Veteran Affairs*, 142 F.3d 1463, 1468 (Fed. Cir. 1998). The district court provided Petitioner with the opportunity to ask any questions prior the court's acceptance of the settlement placed on the record. (R. 53, TR at 60). Petitioner responded that she had no questions. (*Id.*). Certainly, Petitioner could have advised the district judge if she felt that her attorney had coerced her into settling her case or if she was troubled in any other way by the terms of the settlement. She failed to do so. Instead, Petitioner unequivocably indicated her acceptance of the terms of the settlement on the record in open court.

As the Sixth Circuit correctly noted, "[t]he fact that [Petitioner] may have had a change of heart following the settlement or that she erroneously believed that the agreed upon amount of compensation was 'partial payment' is, at most, a unilateral mistake, which is insufficient to invalidate the otherwise valid settlement agreement entered into by the parties." Pet., App. 4 (citation omitted). The holding by the Sixth Circuit was proper in all respects and does not call for a review by this Court.

CONCLUSION

For all of the foregoing reasons, Respondent respectfully requests that this Honorable Court deny the Petition.

Respectfully submitted,

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